

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOSEPH FARMER)	
Claimant)	
)	
VS.)	
)	
WESTERN ENGINEERING CO., INC.)	
Respondent)	Docket No. 236,087
)	
AND)	
)	
GENERAL CASUALTY CO. OF)	
WISCONSIN)	
Insurance Carrier)	

ORDER

STATEMENT OF THE CASE

Respondent and its insurance carrier (respondent) requested review of the June 30, 2010, Post Medical Award entered by Administrative Law Judge Kenneth J. Hursh. William L. Phalen, of Pittsburg, Kansas, appeared for claimant. Jennifer Arnett, of Overland Park, Kansas, appeared for respondent. Respondent requested oral argument in this matter, but in the interest of efficiency, and given that this involves a post-award request for medical treatment and those requests need to be expedited, the Board has denied that request.

ISSUES

This is a post-award request for medical treatment. Claimant was injured on December 9, 1996, when he was struck by a car while working on a highway construction crew. The parties settled this claim in April 2000, with claimant reserving the right to request additional medical treatment.

Claimant initiated this request for additional medical treatment after respondent refused to provide treatment for claimant's gradually worsening pain in the neck and right shoulder. In the June 30, 2010, Post Medical Award, the ALJ ordered respondent to

continue to provide claimant with the treatment and evaluations recommended by Dr. R. David Parris, who has treated claimant as an authorized physician for several years. The ALJ reasoned in part:

Dr. Parris has been seeing the claimant on a regular basis for the last ten years. He is in a better position to know which of the claimant's physical problems relate back to the work injury than either Dr. Wheeler or Dr. Prostic, who saw the claimant one time, in 2009 and 2010, respectively. Dr. Parris' opinion was considered the most credible, and he referred the claimant to an orthopedic specialist at KU for evaluation and treatment of what he believed to be injuries related to the work incident.

The respondent and insurance carrier shall continue to provide the claimant all treatment and evaluations recommended by Dr. Parris for conditions Dr. Parris relates to the work injury. Specifically, the respondent and insurance carrier shall provide as authorized medical expense the pain and arthritis medications, and Jobst compression stockings, prescribed by Dr. Parris, as well as an evaluation and additional treatment, if necessary, of the claimant's right shoulder and neck symptoms by Dr. Toby at KU Medical Center.¹

The ALJ also awarded claimant's attorney the sum of \$4,105.28 for attorney fees and costs.

Citing its medical expert, Dr. Eden Wheeler, respondent contends claimant's present neck and right shoulder symptoms are not related to his 1996 accident. Respondent argues claimant was symptom-free in his right shoulder for over ten years and that due to his recreational activities and activities of daily living it is more likely true claimant's present complaints are unrelated to his 1996 accident. In addition, respondent maintains that claimant's present neck complaints began in February 2006 after he began coughing. Moreover, respondent asserts that the evidence fails to prove claimant's present neck complaints resulted from his 1996 accident or from pulling on compression stockings. In short, respondent requests the Board to find claimant's right shoulder and neck complaints are not a natural consequence of his 1996 accident and to reverse the June 30, 2010, Post Medical Award.

Claimant, on the other hand, maintains the Board should affirm the Post Medical Award. Citing the opinions of Dr. Edward J. Prostic and Dr. Parris, claimant contends his present symptoms are the natural consequence of his 1996 accident.

The only issue before the Board on this appeal is whether claimant's present neck and right shoulder symptoms are related to his 1996 accident.

¹ ALJ Post Medical Award (June 30, 2010) at 3.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

Claimant was seriously injured on December 9, 1996, when he was hit by a speeding car in a highway construction zone. Claimant sustained multiple fractures, including his mandible, both legs, pelvis, left index finger, and right shoulder. As a result of the accident, claimant underwent numerous surgeries and continues to suffer from the ill effects of his injuries.

When evaluated by Dr. Edward J. Prostic in August 1998, claimant was most bothered by the symptoms in his left knee, low back, and right shoulder, but he was also having symptoms in his right leg and left hand. The doctor assigned functional impairment ratings to claimant's right upper extremity at the shoulder, the lumbar spine, right lower leg, and left leg. The doctor's August 1998 medical report was presented to the Special Administrative Law Judge at the parties' April 13, 2000, settlement hearing. That report indicated the doctor found no abnormality in claimant's cervical spine.

Following the settlement hearing, respondent provided claimant with ongoing pain management treatment through Dr. R. David Parris of Fort Scott, Kansas. Claimant initiated this post-award proceeding after respondent terminated that treatment in November 2009, which was shortly after Dr. Parris recommended that claimant return to Dr. Bruce Toby at the KU Medical Center for ongoing right shoulder and neck symptoms. But rather than approving the referral, respondent sent claimant to be evaluated by Dr. Eden Wheeler.

Claimant testified at the February 2010 post-award hearing that he then had pain in his right shoulder, neck, both hands, both legs from the knees to the ankles, and in his low back. According to claimant, the pain in his neck and right shoulder had gradually worsened. Upon questioning from the ALJ, claimant testified he had a sharp pain that ran down the side of his neck to the top of his shoulder for the last year and half.² He also testified that a six inch square scar on his left leg had never healed and, therefore, he had been prescribed compression hose.

This is not the first time, however, that claimant had sought neck and shoulder treatment following settlement of his claim. Claimant returned to the KU Medical Center in 2006 for neck and shoulder complaints, which he attributed to pulling on a Jobst stocking. MRI studies indicated claimant had a large disc herniation at C5-6 for which a discectomy was suggested but never performed.

² PAM Trans. at 22.

Claimant presented the testimonies of both Dr. Prostic and Dr. Parris in this post-award request. Dr. Prostic, a board-certified orthopedic surgeon, examined and rated claimant in August 1998 and saw him again in March 2010 when the doctor focused upon claimant's present complaints in the neck and upper extremities.³ Dr. Prostic testified claimant continued to need pain management treatment from Dr. Parris, which included pain medications and Jobst stockings. Moreover, Dr. Prostic indicated the need for such ongoing treatment was due to the natural flow and progression of claimant's injuries from the December 1996 accident. Dr. Prostic testified, in part:

Q. (Mr. Phalen) Does anything in that [Dr. Eden Wheeler] report change any of the opinions that you've given here today?

A. (Dr. Prostic) It does not change my opinions. If he has developed diabetes that's a separate issue that is not work-related. If he has a neuropathy, that would be a separate issue that is not work-related. But at this point in time I believe that his cervical spine needs to be included into the 1996 accident claim.

Q. Why is that, Doctor?

A. The one specific injury to his neck subsequent to the 1996 injury was pulling upward on the Jobst stockings, and that could certainly aggravate preexisting disease, but it would not be the cause of the herniation of disk at C5-C6. So it's my belief that he probably injured his neck in the original accident, and we were preoccupied with other areas, and that since that time he's had progression of disease in the neck.

Q. Which would be the natural flow and progression of the work injury, correct?

A. Yes.⁴

Moreover, Dr. Prostic testified that it was common with head injuries to have cervical trauma. Accordingly, the doctor believed it was possible claimant sustained cervical spine trauma in the 1996 accident and that could account for his present cervical symptoms. When asked about claimant's *left* shoulder, Dr. Prostic stated those symptoms were probably caused by pain radiating from the cervical spine.

Dr. Parris, who is board-certified as a family physician, has treated claimant on a regular basis following the December 1996 accident since early 1997, if not before. Before the doctor's May 2010 deposition, the last time he had seen claimant was in March 2010. Dr. Parris indicated claimant has neck and shoulder pain, low back pain, and lower extremity pain as a result of his work-related accident. The doctor testified, in part:

³ Prostic Depo. at 25.

⁴ *Id.* at 17-18.

Q. (Mr. Phalen) The chronic pain and traumatic arthritis, is that as a result of the work injury that occurred at Western Engineering on or about December 9, 1996?

A. (Dr. Parris) Yes.

Q. What is the situs of the chronic pain and traumatic pain that Mr. Farmer suffers from?

A. Neck and shoulder pain, low back pain and lower extremity pain, both the upper and lower portion of his lower extremities.

Q. Doctor, Mr. Farmer has – and you believe that those areas of traumatic pain or chronic pain and traumatic arthritis are as a result of work injury at Western Engineering, is that correct?

A. Yes.⁵

Dr. Parris has prescribed Hydrocodone, morphine pills, and arthritis medication for claimant's injuries. In addition, the doctor has prescribed Jobst stockings for the chronic swelling in claimant's legs.

According to Dr. Parris, claimant continues to need the above medications and stockings due to his 1996 accident. In addition, the doctor believes claimant needs ongoing physical therapy, a referral to orthopedic experts at the University of Kansas Medical Center, and perhaps a referral to a pain center.⁶

Dr. Parris testified his records do not indicate when claimant's neck symptoms first began. But those records do reveal that claimant had neck complaints and x-rays in March 2003; neck and left shoulder pain and trigger point injections in February 2006; left shoulder symptoms in May 2006 after pulling on Jobst stockings; right shoulder pain in April 2009 that had increased over the previous six weeks; shoulder pain in September and October 2009; persistent right shoulder pain in November 2009; increasing neck and shoulder/scapular pain in January 2010; and neck pain in February 2010.

Respondent presented the testimony of Dr. Eden Wheeler, who is board-certified in physical medicine and rehabilitation. The doctor examined claimant in September 2009 and suspected, among other things, some AC joint arthritis in claimant's right shoulder, peripheral neuropathy and edema in the lower extremities, degenerative changes in claimant's back, right cubital tunnel syndrome, and cervical stenosis at C5-6 and C6-7.

⁵ Parris Depo. at 7.

⁶ *Id.* at 9.

Dr. Wheeler testified that claimant described a burning pain in his lower extremities, which the doctor was unable to relate to the 1996 accident as that symptom had existed for only three weeks. Despite claimant's initial right shoulder fracture and the labral tear in the shoulder, the doctor was unable to relate claimant's right shoulder symptoms to the 1996 accident. The doctor reasoned the medical records showed there was a 10-year gap between shoulder complaints, that in 2009 claimant told Dr. Toby the shoulder complaints had existed for only about six weeks, and claimant had admitted to performing some carpentry work and to hunting on a regular basis.

Likewise, Dr. Wheeler did not relate claimant's neck complaints to the 1996 accident. The doctor explained her reasoning, as follows:

Q. (Ms. Arnett) Did you form an opinion regarding his neck complaints and their causal relationship to his original accident?

A. (Dr. Wheeler) I did. He was – he – he, in his history, told me that he had had right shoulder assessment before but I – I believe he was somewhat confused because the records actually reflected that when he was getting evaluated for his neck it was his left shoulder that was involved at that time. And I – I formed an opinion that based upon the examination history that it was difficult to – also to causally relate the left and neck shoulder complaints to his original injury of 1996 when he was assessed in 2006-2007.⁷

The doctor acknowledged she reviewed a one-inch pile of claimant's medical records, which she knew was only a portion of claimant's records. Indeed, the doctor testified she had a policy that she would not see anyone with medical records over two inches thick.⁸

Dr. Wheeler, however, indicated the chronic swelling in claimant's legs was related to the 1996 accident and the appropriate treatment was compression hose to stem the swelling. The doctor also testified claimant probably needs ongoing pain medications as a result of his work injuries.⁹

The ALJ considered the above evidence and determined that Dr. Parris' opinions were the most persuasive as the doctor had treated claimant regularly over the last several years and, therefore, Dr. Parris was in the best position to render an opinion regarding the effects of claimant's accident. Accordingly, the ALJ ordered respondent to provide claimant with the medical treatment and evaluations recommended by Dr. Parris.

⁷ Wheeler Depo. at 19-20.

⁸ *Id.* at 32.

⁹ *Id.* at 55.

The Board agrees. Claimant's accident was exceptionally violent and, consequently, injured various parts of his body. Once an injury is established as being work-related, the subsequent progression of that injury remains compensable as long as the worsening is not caused by an independent event. In *Nance*,¹⁰ the Kansas Supreme Court wrote:

Once the work-connected character of any injury, such as a back injury, has been established, the subsequent progression of that condition remains compensable under the Kansas Workers Compensation Act so long as the worsening is not shown to have been produced by an independent non-industrial cause.¹¹

When a primary injury under the Kansas Workers Compensation Act is shown to have arisen out of and in the course of employment, every natural consequent that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.¹²

And where the passage of time causes deterioration of a compensable injury, the resulting disability is compensable as a direct and natural result of the primary injury.¹³ The Board finds it is more probably true than not that claimant's ongoing symptoms are the result of his 1996 accident and, therefore, claimant should receive the reasonable and appropriate medical treatment for those symptoms.

In summary, the Board finds claimant's present need for medical treatment is directly related to his 1996 accident and, therefore, the June 30, 2010, Post Medical Award should be affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Post Medical Award of Administrative Law Judge Kenneth J. Hursh dated June 30, 2010, is affirmed.

¹⁰ *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997).

¹¹ *Id.* at Syl. ¶ 3.

¹² *Id.* at Syl. ¶ 4.

¹³ *Id.* at 550.

IT IS SO ORDERED.

Dated this _____ day of September, 2010.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Jennifer Arnett, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge